



Italy

WTS Global Country TP Guide

Last Update: December 2017

| 1. Legal Basis | |
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| Is there a legal requirement to prepare TP documentation? | No |
| Is the preparation of TP documentation advisable, e.g. to avoid penalties? | Yes |
| Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines? | Yes |
| Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)? | CbCR implemented; No OECD MF/LF (but local variation of MF and LF to avoid penalties are similar to OECD contents of MF and LF). |
| Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status | Decree dated 23 February 2017 published on 8 March 2017, implementing the 2016 Budget Law (Law n. 208 dated 28 December 2015, par. no. 145, 146) |
| Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general: | The penalty protection regime for taxpayer preparing transfer pricing documentation is contained in Article 1, paragraph 6 of Legislative Decree of 18 December 1997, no. 471, introduced by Article 26 of Law Decree no. 78 of 31 May 2010, converted into Law no. 122 of 30 July 2010. Documentation rules are contained in the Decision of the Commissioner of Italian Revenue Agency dated 29 September 2010. |

| 2. Master File (MF) | |
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| | Yes |
| What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF? | No threshold |
| When does the Master File need to be available? | At the time the tax return is filed (nine months from the FY end) |
| When does it need to be submitted? | Within 10 days from the request |
| Does the MF have to be prepared in the relevant local language ? | Yes |
| Is documentation in English permissible? | No |
| What are the (possible) consequences of not having the required MF available? | Italy does not have a statutory requirement, but documentation is recommended to avoid shifting the burden of proof regarding arm's length pricing to the taxpayer. In addition, documentation that complies with specific regulations is necessary to obtain penalty protection |
| What are the possible consequences of not having the MF available? | |
| Penalties? | No |
| Imprisonment? | No |
| Shifting of the burden of proof? | Yes |
| Other? | No |
| To which extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the BEPS implementation overview chart? | Almost entirely consistent with the OECD Requirements |

| 3. Local File (LF) | Yes |
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| What is the threshold requirement for the obligation to prepare a LF? | There is no materiality threshold for having to prepare transfer pricing documentation. Nevertheless, entities classified as small-to-medium sized (i.e. whose annual turnover is less than EUR50 million), will benefit from certain simplified procedures for the updating/preparation of the documentation. |
| When does the LF need to be available? | At the time the tax return is filed (nine months from the FY end) |
| When does the LF need to be submitted? | Within 10 days of the request |
| Does the LF have to be prepared in the relevant local language? | Yes |
| Or is documentation in English permissible? | No |
| What are the possible consequences of not having the LF available? | |
| Penalties? | No |
| Imprisonment? | No |
| Shifting of the burden of proof? | Yes |
| Other? | No |
| To which extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines? | Almost entirely consistent with the OECD Requirements |

| 4. Country-by-Country Reporting | Yes |
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| What is the threshold requirement for the obligation to prepare Country-by-Country Reporting? | EUR 750 million consolidated revenue in the previous financial year |
| Euro Equivalent | EUR 750.000.000 |
| As from which year does this CbCR obligation exist? | From the year following the year that the threshold is met |
| When and how do the tax authorities need to be notified who the reporting entity is? | At the time the tax return is filed (nine months from the FY end), in the tax return itself. |
| If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline? | Twelve months from the FY end |
| Are there any deviating submission deadlines for the secondary mechanism? | No |
| Does your country have a requirement that the financial figures of the group need to be aligned with? | No |
| Does your country have a requirement that the financial years of the group need to be aligned with? | No |
| Where is the CbCR to be submitted ? | No information yet (a technical specifications decree is expected) |
| How is the CbCR to be submitted, specifically, is there any prescribed standard? | No information yet (a technical specifications decree is expected) |
| What are the possible consequences of not having the CbCR available? | |
| Penalties? | Yes |
| Imprisonment? | No |
| Shifting of the burden of proof? | Yes |
| Other? | No |
| To which extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines? | Consistent with OECD standard |

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| Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")? | Yes |
| Did your country enter into other information exchange agreements, such as on a bilateral basis? | Yes |
| Please specify the country involved and date the agreement came into force. | Recently Italy has implemented the European Union Automatic Information Exchange Directive (EU Directive 2016/881/EU) and Directive 2015/2376 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation * directive 2016/881: 3rd June 2016 ; *directive 2015/2376: 14 December 2016 |
| Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country? | Yes |

5. TP disclosure in tax return or transfer pricing specific returns

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| Does a taxpayer need to disclose information regarding TP documentation in his tax return? | Yes |
| What would be the filing deadline? | Nine months from the FY end |
| When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences? | In the case of unfaithful tax return. A tax return showing either a taxable income lower than the one assessed or a tax credit higher than those owed to the taxpayer results in a penalty ranging from 90% to 180% of the higher taxes ultimately due. Special rules apply where similar violations are repeated over various years. Self-disclosure of tax law breaches are allowed on payment of the higher taxes and of reduced administrative penalties. The reduced penalties are always computed on the floor of the applicable range of penalties. The starting of an audit does not prevent the possibility to amend tax returns or to carry out late tax payments. |
| What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP? | According to the 2015 reform of tax crimes, the only conduct that results in criminal liability is conduct which is detrimental to the Italian revenues, characterised by the use of fraud, false documentation and sham structures. Therefore, abusive transactions, whose sole intent is the realisation of a tax advantage, are not relevant for tax criminal purposes, if they are not carried out through fraudulent, false or sham means |
| Does a taxpayer need to file TP-specific returns? | No |

6. Benchmarking

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| Is there any local guidance or requirement with regard to the preparation of a benchmark study? | No |
| Are there any materiality thresholds that apply for the requirement to have a benchmark study available? | Yes. Entities classified as small-to-medium sized (i.e. whose annual turnover is less than EUR50 million), will benefit from certain simplified rules for the updating/preparation of the documentation. Under the simplified rules, the update of external comparables can be made every three years rather than annually. |

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| Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3? | Yes |
| Or is a new search every three years without any financial updates in year 2 and 3 sufficient? | No |

7. Year-end adjustments

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| Are year-end adjustments permissible? | Yes |
| Does the taxpayer have to comply with any specific features or guidance? | No |

8. Transfer Pricing Audit and Dispute Resolution Mechanisms

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| What are currently the main TP areas of scrutiny by the tax authorities in your country? | Attribution of free capital to PE (banks, insurance, financial entities); management fees; benchmarking on IC loans |
| Based on your experience, are joint or multilateral audits initiated and carried out? | No |
| Does the taxpayer have the option to apply for bilateral or multilateral APAs? | Yes |
| Are there any restrictions? | The agreement signed by the taxpayer and the Tax Administration remains in force for five years starting from the fiscal year in which it is signed, provided that the circumstances – specifically, the critical assumptions - under which the agreement was signed remain unchanged. In case of bi/multilateral APAs, the validity period can start from the date of the application filing, consistently with the mutual agreement concluded with the treaty partner(s) under Article 25 of the Model tax convention. |

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